

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Ken Owen, Director of Christian Community Concerns, submitted a written statement (filed) to Council and expressed concern regarding confusion about what is, and is not, acceptable seasonal religious expression in the community. He cited the following case law and stated that the following forms of religious expression are legal under the constitution:
 1. Students are free to express their religious beliefs in school (*Lovell v. City of Griffin*, 303 U.S. 444 1938; *Westfield High School L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2D 98 D. Mass. 2003);
 2. At school students can sing Christmas carols at concerts, teach the biblical origins of Christmas, and perform the Christmas story of Mary, Joseph, Jesus, and the shepherds (*Florey v. Sioux Falls School District*, 619 F. 2D 1311 6th Cir. 1980; *Stone v. Graham*, 449 U.S. 39 1980); and
 3. Nativity displays can be placed in schools, parks, and government buildings (*Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F. 2D 1538 6th Cir. 1992; *West Virginia v. Barnette*, 319 U.S. 624, 642 1943; *Lynch v. Donnelly*, 465 U.S. 668, 671 1984).

In conclusion Mr. Owen stated that the U.S. Constitution, laws, and court decisions are all construed to protect and permit religious expression in both public schools and government buildings.

- Donna Phillips, representing Friends of Lodi Lake, expressed opposition to the Extreme Sports proposal by the Parks and Recreation Department to be brought before Council in January. She stated that it would bring noise and a carnival atmosphere to a residential area. Friends of Lodi Lake would like to keep the park serene and peaceful. She urged Council to reject the proposal.
- Ron Bernasconi recalled that a time limit was placed on speakers at Council's special joint meeting with the Recreation Commission on November 10. He noted that the following day, City Clerk Blackston provided Council with a memorandum, which indicated that the five-minute limit applied to non-agenda items. Mr. Bernasconi stated that he had a presentation prepared for the November 10 meeting, which spanned a decade of facts and circumstances; however, he was not given adequate time to make the presentation. He reported that since 1993 the City's relationship with the Boosters of Boys and Girls Sports (BOBS) has created joint duties imposed by state law to screen out violent sexual criminals who have volunteered to have authority over youth on public schools, parks, and recreational facilities. Mr. Bernasconi stated that he had documents, which established these facts; however, they were not included in the 97-page meeting packet that Council received on November 10, though they had been in the custody of the City Attorney. He reminded Council Members that staff was supposed to fully apprise them of the legal and operational relationship between the City and BOBS. The documents provided evidence that various public officials engaged in willful or negligent misconduct related to the refusal to implement and/or obey state law to protect youth from violent or sexual criminals. He believed they were serious matters that deserved public disclosure. Mr. Bernasconi referenced documents he submitted to Council (filed) and reported that in 1995 Deputy City Attorney John Luebberke advised the Recreation Commission that the 1993 Public Resources Code sees these codes as all inclusive and that City employees and volunteers having disciplinary authority over minors must be screened. He stated that Mr. Luebberke also acknowledged a relationship between the City and the BOBS and recommended that all volunteer positions be screened. Mr. Bernasconi asked Council to grant him an opportunity to fully address these issues.

City Attorney Hays recalled that the City Clerk's memorandum also indicated that Council's procedures provide for a motion to limit debate, which was what occurred on November 10. He stated that the program referred to by Mr. Bernasconi had been implemented by the City and

has been in place for several years. He acknowledged that Council discussed the matter in 1995; however, the topic was tabled and not brought back. Staff implemented the procedure subsequent to that time.

Mr. Bernasconi noted that the minutes of November 10 reflect that two Recreation Commissioners supported the position that BOBS board members have supervisory and disciplinary authority over minors on public schools, parks, and playgrounds. He pointed out that the City did not implement the law until August 2001, only after the Department of Justice had required them to do so.

Council Member Hitchcock recalled that Mr. Beckman had asked on November 10 whether limiting public comments to five minutes was a standard procedure, to which Mr. Hays had replied that it was. She felt that Council had been misinformed.

Council Member Beckman agreed with Ms. Hitchcock; however, given Council's authority to limit debate, he felt that the end result at that particular meeting would not have changed.

Addressing Mr. Bernasconi, Mayor Hansen stated that an ad hoc committee was created to review the BOBS matter and return to Council with recommendations. He recalled that Mr. Bernasconi has had many opportunities to express his concerns to Council, and noted that if he would like to pursue the matter in court it would be his choice.

Council Member Hitchcock did not believe there was due process given on November 10 and stated that when the committee makes its recommendations to Council the public will have an opportunity to respond.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider unmet transit needs in Lodi for fiscal year 2003-04.

Tiffany Fink, Transportation Manager, reported that the Transportation Development Act requires that annual hearings be held for unmet transit needs. The hearings are held in every jurisdiction throughout the county at a variety of venues. The goal is to determine where there is a deficiency in transit service that could be met. Feedback from the meetings is taken to the social services technical advisory committee to review and determine if they are reasonable. A draft document will be prepared and available to the public for review later this year.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

Council Member Hitchcock asked what comments Ms. Fink had received and she replied that she had received one comment thus far; however, it did not relate to Lodi's service. Ms. Hitchcock recalled that concerns have been expressed for years regarding the length of time it takes for Dial-A-Ride service. She believed that there were more complaints last year than previously. It had been pointed out to her that the cause for delay was in part due to students using Dial-A-Ride rather than accessing the Grapeline.

Ms. Fink reported that, overall, ridership is up and reservations have increased each year. Lodi has a general public service program, so preference is not given to seniors or the disabled.

Wednesday, December 17, 2003

filed 12-17-03

Honorable Lodi City Council Members,

Last week I emailed this Council the City Clerk's November 11, 2003 Memorandum that indicates that the 5 minute time limitation on public comment applies only to non-agenda items, after I was not able to complete most of my presentation to the Council on November 10.

First and foremost it is important to realize that since 1993 the City's relationship with the BOBS has created joint duties imposed by State Law to screen out violent or sexual criminals who volunteer to have authority over our youth on public schools, parks and recreational facilities on behalf of the City.

I had documents to present to the Council, which establish this critical fact, which are not voluminous.

However, they must be examined within the context of the historical facts and circumstances that span a decade for the Council to make a fully informed decision.

Ironically, this will take less time than my half hour presentation to the Council in August 2003 regarding our groundwater pollution lawsuit and involves something more important than money, which is public safety.

These documents were not included in the 97 page package prepared by your Staff, which was supposed to fully apprise you regarding the legal and operational relationship between the City and the BOBS even though these documents were in the custody and control of the City Attorney.

These documents evidence the fact that various public officers engaged in willful or negligent misconduct related to the refusal to implement and/or obey a State Law to protect our youth from violent or sexual criminals.

Please review the attached documents that were not included in the 97 page packet prepared by Staff for the November 10, 2003 Public Hearing, which establish that Councilman Land moved to limit public comment on an agenda item and Recreation Commissioner Bob Johnson (who was subsequently named the Chairman of the Ad Hoc Committee to review BOBS' operations) both failed to disclose their role in the City's 1995 decision to table the Deputy City Attorney's recommendation to have all BOBS volunteers fingerprinted or in the alternative seek an Attorney General's opinion regarding the applicability of the Public Resources Code to the BOBS.

These failures to act in the best interests of San Joaquin County residents by a non-profit public benefit corporation and a local agency are very serious matters that deserve nothing less than full public disclosure.

Recently I received a mailing from Assemblyman Nakanishi which states,

"You deserve to know if a sexual predator is living near your child's school..."

Don't you think Parents deserve to know that a violent criminal or sexual predator was in charge of their children when they participated in Lodi Youth Sports Programs on schools, parks and playgrounds?

Shouldn't the City learn from the past and make sure that doesn't happen again?

Assemblyman Nakanishi is right. Parents, Taxpayers and the Public deserve to know and one way or another they will be fully informed. I hope the City Council will help me in that regard - not limit public comment to help address this public safety issues and work with me to eliminate loopholes in the Public Resources Code in the coming year.

Now that the City Clerk has advised you that the City Attorney misinformed you regarding limitation on public comment when this matter was on your agenda, will this body grant me sufficient time during a public hearing to address these critical public safety and open governance issues?

Respectfully,

Ron Bernasconi
3019 Oak Knoll Way
Lodi, CA 95242



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE:

Request for Attorney General's Opinion Regarding the Applicability of Public Resources Code § 5164 and Education Code § 10911.5 to City Parks and Recreation Youth Sports Programs and the Boosters of Boys and Girls Sports (BOBS)

MEETING DATE:

June 07, 1995

PREPARED BY:

Deputy City Attorney

RECOMMENDATION:

That the City Attorney's Office request an Attorney General's opinion regarding the applicability of Public Resources Code § 5164 and Education Code § 10911.5 to City Parks and Recreation youth sports programs and the Boosters of Boys and Girls Sports (BOBS).

BACKGROUND:

State law which became effective on January 1, 1993 requires that all adult city employees or volunteers in a supervisory or disciplinary position over minors be screened for various Penal and Health and Safety Code violations. These violations include sex crimes, drug crimes and crimes of violence.

Public Resources Code § 5164 provides that no city shall use any employee or volunteer to perform services at any park, playground, recreational center or beach in a position having supervisory or disciplinary authority over minors if that person has been convicted of any of the offenses outlined in Penal Code § 11105.3(g). Such offenses include assault with intent to commit a sexual act, rape, cruelty to a child, contributing to the delinquency of a minor, felony violations of the Uniform Controlled Substances Act and other similar provisions.

Additionally, Education Code § 10911.5 provides that all cities shall require each employee or applicant for employment who will have direct contact with minors to immediately submit one set of fingerprints to the Department of Justice for screening. The result of this screening shall be

APPROVED: _____

THOMAS A. PETERSON
City Manager



CITY OF LODI

COUNCIL COMMUNICATION

kept in a secure file, separate from the regular personnel file of the person. This requirement applies to after school, vacation sports and daycare activities.

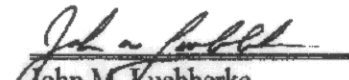
For purposes of complying with these mandates the City is allowed to screen these persons through the Department of Justice pursuant to Penal Code § 11105.3. To perform this screening the Department of Justice requires fingerprints and personal identification information of the person to be screened in addition to a fee which is currently \$52.00 per screening. This fee is in addition to any cost incurred for the actual taking of the fingerprints.

This matter was presented to the Parks and Recreation Commission at their May 02, 1995 meeting. The commissioners were very concerned with the possible fiscal impact of this mandate as well as its probable effect on volunteerism especially if it is applied to the hundreds of volunteer coaches involved in the BOBS programs. The city and the BOBS are intertwined to such an extent that it is probable that the volunteers working under the auspices of the BOBS will have to be fingerprinted and cleared through the Department of Justice. This close partnership between the city and the BOBS is unique and not clearly addressed by the statutes at issue and there is virtually no case law directly on point.

Before the city takes any substantial steps regarding volunteer coaches in this matter I would appreciate the opportunity to obtain an opinion from the Office of the Attorney General as to the applicability of this mandate to these unique circumstances. While such an opinion does not have the force of law, reliance on the opinion would be strong evidence of the city's good faith attempt to comply with the mandate.

FUNDING: Not applicable at this time.

Respectfully submitted,


John M. Luebberke
Deputy City Attorney

JML:pn

APPROVED: _____

THOMAS A. PETERSON
City Manager

LODI PARKS AND RECREATION COMMISSION MEETING MINUTES
CARNEGIE FORUM
Tuesday, May 2, 1995

I. Roll Call

Present: Commissioners: Bob Johnson, Keith Land, Elvera Melby, Chad Meyer, Chairman Ed Wall

Staff Present: Ron Williamson, Director; Scott Essin, Parks Superintendent; Layne Van Noy, Recreation Supervisor; Lisa Rudloff, Recreation Supervisor; Mike Reese, Recreation Supervisor; Susan Rodriguez, Department Secretary

B. Fingerprint Information and Requirements

John Leubbreke, Assistant City Attorney was present and gave a verbal report on the fingerprinting requirements as stated in the Public Resources Code and the Education Code. Mr. Leubbreke sees these codes as all inclusive, that City employees and volunteer having disciplinary authority over minors be screened. Mr. Leubbreke also acknowledged the unique relationship between the City of Lodi and the Boosters of Boys/Girls Sports and recommends that all volunteer positions under the B.O.B.S. be screened.

C. Totem Pole

Superintendent Essin reported that the totem pole at Lodi Lake needs to be taken out due to dry rot. The Historical Society has expressed an interest in keeping the top portion depicting Mr. Russell French to whom the pole was dedicated.

Commissioner Land recommended taking the pole out and storing for 90 days. At that time, if no one has come forward with a concern, destroy the pole (after the Historical Society takes what they want).

D. Reports and Updates

1. W.I.D. meeting/year round water in Lake

Commissioner Johnson, Director Williamson, and Superintendent Essin met with Woodbridge Irrigation District Board of Directors in April. There was mixed reaction to the proposal, however they are willing to work towards a solution. The Board will be making a list of questions and issues needing to be addressed.

Commissioner Johnson suggests getting someone with more knowledge in this area involved. He will continue to work towards the goal.

2. Indoor sports center

Commissioner Meyer and Melby have met with Larry Wenell. At this time they are working towards developing a scope, funding backing, and then will proceed to the study phase. Once to the study phase, the subcommittee can be expanded.

3. Joint-Use Agreement with L.U.S.D.

We have taken out basic maintenance and forwarded these figures to Jerry Glenn, Assistant City Manager. We have not heard back yet from the school district.

4. Main Street Fire Station

Director Williamson will meet with Larry Wenell May 3, 1995 at 9:00 a.m. to discuss use of this building and what is to go into it. Director Williamson will bring results back to

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CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 7, 1995
7:00 P.M.

1. ROLL CALL

Present: Council Members - Davenport, Pennino, Sieglock, Warner and Mann (Mayor)

Absent: Council Members - None

Also Present: City Manager Peterson, Assistant City Manager Glenn, Community Development Director Schroeder, Public Works Director Ronsko, Interim City Attorney Stovall and Acting City Clerk Taylor

June 7, 1995 Continued

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- l) Appropriated \$20,000 from the Street Development Impact Mitigation Fund for the Thurman Street crossing at the Central California Traction Company (CCT) railroad tracks, and authorized Public Works Director to have the work completed by the CCT.
FILE NO. CC-7(h), CC-21(a), CC-56 and CC-158
- m) Approved the specifications and authorized advertisement for bids for the purchase of 384 electric watthour meters for the Electric Utility Department for new housing developments as well as replacement of existing obsolete and deteriorated meters.
FILE NO. CC-12.1(c), CC-21(a) and CC-51(d)
- n) Approved the specifications and authorized advertisement for bids for 30,000 feet of #2AWG and 22,500 feet of 750Kcmil underground primary conductor for the Electric Utility Department's use in new residential and commercial subdivisions, as well as providing inventory for routine or emergency maintenance of existing electrical system.
FILE NO. CC-12.1(c), CC-47 and CC-51(d)
- o) Agenda Item #E-15 entitled, "Request for Attorney General's Opinion Regarding the Applicability of Public Resources Code Section 5164 and Education Code Section 10911.5 to City Parks and Recreation Youth Sports Programs and the Boosters of Boys and Girls Sports (BOBS)" was removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar. (Removed by Council Member Warner)
- p) Adopted Resolution No. 95-75 declaring weeds a public nuisance and initiating abatement proceedings on various parcels throughout the City, and further, set the matter for public hearing for the regular City Council meeting of June 21, 1995.
FILE NO. CC-27(a), CC-112 and CC-158
- q) Assistant City Manager Glenn provided Council with a copy of the annual Unmet Transit needs report prepared by the San Joaquin County Council of Governments (COG), pointing out the report concludes "there are no unmet transit needs in Lodi at this time".
FILE NO. CC-6, CC-7(n) and CC-50(b)
- r) Adopted Resolution No. 95-76 authorizing a one year extension to the contract with Enforcement Technology for the processing of parking citations at a fee of approximately